

# Catholic University Law Review

---

Volume 35  
Issue 4 *Summer 1986*

Article 16

---

1986

## Toward Eliminating the Abuse, Neglect, and Exploitation of Impaired Adults: The District of Columbia Adult Protective Services Act of 1984

Laurie A. Lewis

Follow this and additional works at: <https://scholarship.law.edu/lawreview>

---

### Recommended Citation

Laurie A. Lewis, *Toward Eliminating the Abuse, Neglect, and Exploitation of Impaired Adults: The District of Columbia Adult Protective Services Act of 1984*, 35 Cath. U. L. Rev. 1193 (1986).

Available at: <https://scholarship.law.edu/lawreview/vol35/iss4/16>

This Article is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact [edinger@law.edu](mailto:edinger@law.edu).

## **TOWARD ELIMINATING THE ABUSE, NEGLECT, AND EXPLOITATION OF IMPAIRED ADULTS: THE DISTRICT OF COLUMBIA ADULT PROTECTIVE SERVICES ACT OF 1984**

In recent years the issue of the abuse of adults, particularly the elderly, by caretakers or family members, has become the focus of public attention.<sup>1</sup> Although the data as to the incidence of abuse of the elderly is considered to be somewhat unreliable, one such estimate places the number of moderately to severely abused noninstitutionalized elderly individuals at roughly equal to the number of nursing home residents nationwide.<sup>2</sup> When the Adult Protective Services Act of 1984 (APSA)<sup>3</sup> became effective on October 1, 1985,<sup>4</sup> the District of Columbia joined over half the states in the nation by enacting legislation aimed at decreasing the incidence of abuse and neglect of adults.

The provision concerning protective services to adults in the District, however, is not a new development brought about by the passage of the 1984 Act. Protective services were available to those over fifty years of age as early as 1967.<sup>5</sup> Today these services are funded by the federal government through the Social Services Block Grant, and by City appropriations.<sup>6</sup> The services are now available to all qualified adults over the age of eighteen, regardless of income. They include the evaluation of reports of abuse, ex-

---

1. Salend, Kane, Satz & Pynos, *Elder Abuse Reporting: Limitations of Statutes*, 24 GERONTOLOGIST 61 (1984) [hereinafter cited as Salend]; Katz, *Elder Abuse*, 18 J. FAM. L. 695-96 (1979-80).

2. Salend, *supra* note 1, at 61. Estimates of the number of abused elderly individuals nationwide range from .5 to 2.5 million. These estimates include maltreatment by both family members and caretakers. The lack of reliable statistics is attributed to circumstances including "[u]nclear definitions of elder abuse, professional and public unawareness and the victim's reluctance to take action." *Id.* See Katz, *supra* note 1, at 697-700.

3. D.C. CODE ANN. §§ 6-2501 to -2513 (Supp. 1986). Rules were directed to be promulgated to carry out the purposes of the Act. *Id.* § 6-2509. They have not, as yet, been issued.

4. 32 D.C. Reg. 13, 24 (1985). This delay does not apply to § 6-2503(e). *Id.* at 24.

5. *Protective Services for Adults, Fiscal Year 1984, History of the Program*, prepared by the Adult Protective Services Program, Social Services Division of the Family Services Administration, Commission on Social Services, District of Columbia Department of Human Services [hereinafter cited as *Protective Services for Adults*]. The program originated in 1967, and was financed through federal funding until 1970. At that time, the city took over the funding responsibilities. In 1974, due to budget cuts, the program was disbanded, only to be reinstated in 1976. It has been in continuous existence since that time. *Id.*

6. *Id.*; Social Services Block Grant Annual Services Plan for the District of Columbia, Services Program Year—October 1, 1984-September 30, 1985, at 26 [hereinafter cited as *Social Services Block Grant Annual Services Plan*].

ploitation or neglect, counseling for the client and the client's family, and the arrangement of "appropriate medical, legal, financial, placement, social or other community services."<sup>7</sup> The Act itself was developed, in part, because of the perception that the services already available were not reaching all those who could benefit from them.<sup>8</sup>

The primary purpose of the Act is to provide a mechanism through which an individual with a physical or mental impairment who is being abused, neglected or exploited by another person can obtain services, especially in the face of third party resistance and interference,<sup>9</sup> "while at the same time respecting as foremost the [individual's] interest[ ] [in] self-sufficiency and privacy."<sup>10</sup> This is to be accomplished by a system in which designated professionals must report suspected instances of abuse and neglect, and in which members of the community may report such occurrences.<sup>11</sup> The system further requires the investigation of every report of abuse, neglect, or exploitation.<sup>12</sup> The Act also provides for "protective orders" in cases where a third party is suspected of coercing a potential client into refusing the offered services, or denies access to those who are sent to investigate a report of abuse, neglect or exploitation.<sup>13</sup> Further, it mandates services in cases where the District of Columbia Department of Human Services (DHS) determines that the individual in question is in need of protective services, and when other requirements for service are fulfilled.<sup>14</sup> In an attempt to strike a balance between granting aid to impaired adults while providing for maximum self-determination,<sup>15</sup> the Act brings about a significant change in District law.

This Note will briefly discuss the history of the adult protective services concept. It will then examine the prior law in the District of Columbia pertaining to the support and abuse of adults. Finally, it will conclude with a detailed discussion of the Adult Protective Services Act of 1984, its legislative history, and its impact on prior District of Columbia law.

---

7. Social Services Block Grant Annual Services Plan, *supra* note 6, at 26.

8. P. Shackleton, Chairperson, Committee on Human Services, Report to the Council of the District of Columbia concerning Bill 5-334, Adult Protective Services Act of 1984, at 1 (October 18, 1984) [hereinafter cited as P. Shackleton].

9. *Id.*

10. *Id.* at 2.

11. D.C. CODE ANN. § 6-2503 (Supp. 1986).

12. *Id.* § 6-2504(a)(1).

13. *Id.* §§ 6-2506 to -2507.

14. *Id.* § 6-2505(a)(1).

15. "Self-determination" is defined by Webster's New Collegiate Dictionary as being "free choice of one's own acts or states without external compulsion." WEBSTER'S NEW COLLEGIATE DICTIONARY 1049 (1976).

## I. PROTECTIVE SERVICES FOR ADULTS: DEFINITIONAL DIFFICULTIES

There are at least two definitional components of the adult protective services concept: first, define who are "adults in need of protection"; second, determine what are "protective services?"<sup>16</sup>

### A. Adults in Need of Protection

Recent public exposure of instances of abuse of the elderly has led to widespread support for legislation to combat the problem.<sup>17</sup> A demand was made for elder abuse reporting statutes, much like that heard when the incidence of child abuse first came to public attention in the 1960's.<sup>18</sup> According to a study published in 1984, as of January 1, 1981, sixteen states had passed legislation mandating that adult abuse be reported.<sup>19</sup> Although most of the statutes included all eligible adults eighteen or older in their coverage, the study found that the statutes seemed to be designed and utilized primarily as mechanisms for the reporting of elder abuse.<sup>20</sup>

The definition of adult abuse varies from state to state.<sup>21</sup> It can include the concepts of neglect, psychological and physical abuse, or exploitation by third parties, as well as self-abuse.<sup>22</sup> In turn, these terms are defined differently from state to state.<sup>23</sup> A similar problem arises in delimiting to what extent a person must be the victim of abuse in order to receive services,<sup>24</sup> as well as what the qualities are that render an individual in need of protec-

---

16. Project Focus, *Adult Protective Services: The State of the Art*, 6 (August 1982) (a study performed by Project Focus with funds administered by the New York City Human Resources Administration) [hereinafter cited as Project Focus Study]. "Project Focus is a multistate research and demonstration program aimed at developing and disseminating model approaches to the provision of adult services." P. SCHACKLETON, *supra* note 8, at 2. This lengthy study was partially funded by the United States Department of Health and Human Services. *Id.*

17. Katz, *supra* note 1, at 696-97.

18. *Id.*

19. Salend, *supra* note 1, at 61. Prior to the publication of the study in 1984, four additional states had enacted mandatory reporting statutes: Oregon, OR. REV. STAT. §§ 410.610-.700 (1983); Hawaii, HAWAII REV. STAT. §§ 349C-1 to -8 (Supp. 1984); Texas, TEX. HUM. RES. CODE ANN. §§ 48.001 to 48.084 (Vernon Supp. 1986) (originally enacted Sept. 1, 1981); Massachusetts, MASS. GEN. LAWS ANN. ch. 19A, §§ 1-35 (West Supp. 1985).

20. Salend, *supra* note 1, at 62.

21. *Id.*; see generally Project Focus Study, *supra* note 16, at 6-19.

22. Project Focus Study, *supra* note 16, at 12-13.

23. Katz, *supra* note 1, at 62; e.g., compare Maryland's Adult Protective Services Act definition of "abuse" as: "the sustaining of any physical injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act by any person." MD. FAM. LAW CODE ANN. § 14-101(b) (1984 & Supp. 1985), with the District of Columbia's definition of abuse found *infra* at notes 70-78 and accompanying text.

24. Project Focus Study, *supra* note 16, at 13.

tion.<sup>25</sup> An individual may be subjected to abuse, neglect or exploitation, but still possess sufficient individual capability to extricate himself or herself from the situation engendering that result.<sup>26</sup>

### B. What are Protective Services?

Protective services can be provided through a state adult protective services program as well as through the operation of a statute.<sup>27</sup> The scope of services provided for by state statutes differ, as do the means of delivering those services to the individual. Most statutes require the reporting of abuse or neglect of adults. In addition, the statutes may contain an array of provisions including: mandated services, involuntary or voluntary provision of services, protection from third party intervention, and guardianship clauses.<sup>28</sup> The determination of what a statute is to contain is based largely on policy issues. The protective services provided by statute in the District of Columbia are defined as services designed to remedy or substantially reduce the likelihood of an individual being abused, neglected or exploited by

---

25. *Id.* at 11-12.

26. Katz, *supra* note 1, at 718-19.

27. Researchers report that state laws, regulations and policies tend to focus on emergency situations in which an endangered adult needs immediate services. Project Focus Study, *supra* note 16, at 7. On the other hand, advocacy groups hold broad definitions of what the services should involve. They tend to "include prevention and support services to be delivered long before a client becomes seriously endangered, and long after the endangerment is no longer critical." *Id.* Since the services offered as "adult protective services" fit into the broader category of social services, the state determines what those services are either by statute or policy. *Id.* at 7-9. For example, a study by the American Bar Association Commission on the Mentally Disabled, published in 1979, found that at that time in Wisconsin, "[a]dult protective services" was a term used to disguise a civil commitment statute. Axilbund, *Report of an Inquiry into Limited Guardianship, Public Guardianship and Adult Protective Services in Six States, Executive Summary*, ABA COMMISSION ON THE MENTALLY DISABLED, Sept. 1979, at 18-19. The Adult Protective Services Program in Ohio most often resulted in clients receiving a guardian, while in North Carolina, services were actually provided. *Id.* The ABA Report cites the 1972 Ohio Statute concerning protective services as defining that term to mean "performance of the duties of a guardian . . . with respect to a mentally retarded or other developmentally disabled person." *Id.* at 9 (quoting OHIO REV. CODE ANN. §§ 2109.1-.61 (1972)). The services designated by the North Carolina statute included:

those social, medical, psychiatric, or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include but not be limited to the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation.

*Id.* at 7 (quoting N.C. GEN. STAT. §§ 108-102 to 108-106.8 (1975)).

28. Salend, *supra* note 1, at 62-63.

another.<sup>29</sup>

The right to self-determination is a major concern in deciding whether to mandate the reporting of abuse of the elderly.<sup>30</sup> States, through their police power or in their role as *parens patriae*, may subject the mentally ill or mentally incapacitated to state intervention in their lives in order to protect their person or property.<sup>31</sup> However, one commentator cautions against using age "as a determining criterion of predominant pathology," meaning that advanced age alone does not make a person sufficiently incapacitated to justify state interference in his or her life.<sup>32</sup> Thus, elderly individuals have a right to self-determination that should not be overlooked based simply on age.<sup>33</sup> An individual's refusal of services, particularly in the case of self-abuse or self-neglect, should not automatically result in an assumption of incapacity and hence guardianship or commitment proceedings.<sup>34</sup>

Some commentators see statutes mandating the reporting of abuse and neglect of the elderly as a direct route to commitment proceedings.<sup>35</sup> Under mandatory reporting statutes, abused or neglected individuals who desire to be left alone would be subject to having their situation reported to a state official, thereby increasing the likelihood of receiving services that they do not want.<sup>36</sup> The same problem of balancing the desire to protect self-determination with that of alleviating abuse arises when a person is forced to involuntarily accept services, even without raising the possibility of commitment or guardianship, through the use of a protective order. Incapacitation in one form or another is generally the standard established by state statutes in order to sanction protective services.<sup>37</sup> Most statutes do not limit their scope to the elderly, but apply to any incapacitated adult of the age of eighteen or over who meets the statutory requirements.<sup>38</sup>

---

29. D.C. CODE ANN. § 6-2501(12) (Supp. 1986). See *infra* notes 91-92 and accompanying text.

30. Katz, *supra* note 1, at 719-20.

31. *Id.* at 716, 718-19.

32. *Id.* at 718.

33. *Id.* at 717-20. "If the individual has the right to decide whether to refuse medical care even though that refusal may end in death, there surely is a right to make less life-threatening choices regarding personal eating habits, dress, appearance, cleanliness, and other elements of one's lifestyle." *Id.* at 720 (footnote omitted).

34. Katz, *supra* note 1, at 718-19.

35. *Id.* at 719.

36. *Id.* at 718-20.

37. Salend, *supra* note 1, at 62.

38. *Id.*

## II. ADULT PROTECTIVE SERVICES IN THE DISTRICT OF COLUMBIA

### A. Prior Law and Policy

Several issues addressed by the APSA were also addressed by prior District of Columbia law. One such issue is the obligation of an adult to support an adult family member or friend.<sup>39</sup> At common law, there was no obligation placed on an adult child to support a needy parent.<sup>40</sup> Further, a parent possesses no duty to support an adult child in the absence of special circumstances, an "adult child" being defined as one who has attained the legal age of majority.<sup>41</sup> However, there was a legal obligation, both at common law and by statute, placed on a spouse to support his or her spouse.<sup>42</sup> Finally, there was no law requiring an adult to support a friend in need.

Sections 16-1001 to 16-1006 of the District of Columbia Code (D.C. Code), enacted prior to the APSA, deal with "Proceedings Regarding In-

39. See *infra* notes 40-42 and accompanying text.

40. "The liability of a child to support its parents, who are infirm, destitute or aged, is wholly created by statute; and it has been truly said, that the statute imposes on such relatives duties unknown to the common law." *In re Fitzwater's Guardianship*, 69 F. Supp. 866, 867 (D.D.C. 1947); accord, *Stone v. Brewster*, 218 A.2d 41 (D.C. 1966); see also D.C. CODE ANN. § 21-586(a) (1981):

The father, mother, husband, wife, and adult children of a mentally ill person, if of sufficient ability, and the estate of a mentally ill person, if the estate is sufficient for the purpose, shall pay the cost to the District of Columbia of the mentally ill person's maintenance, including treatment, in a hospital in which the person is hospitalized under this chapter.

See *Groover v. Essex County Welfare Bd.*, 264 A.2d 143 (D.C. 1970) (where the son was obligated under Uniform Reciprocal Enforcement of Support Act to pay \$30 every two weeks for support of his mother due to statutory obligation for husband, father, mother, or adult child of recipient of public assistance to help support them. D.C. CODE ANN. §§ 3-201 to 3-223 (Supp. V. 1966)). Today the section limits the obligation to the spouse or parent of a minor child. D.C. CODE ANN. § 3-220 (1981).

41. See *supra* note 40; see also *Nelson v. Nelson*, 379 A.2d 713 (D.C. 1977), a case in which child support was sought to be continued past the age of 21 for a son who was blind in one eye. The court set out the general rule in the District of Columbia that "a parent's legal duty to support a child terminates when the child reaches majority." *Spence v. Spence*, 266 A.2d 29 (D.C. 1970). The court indicated that in other jurisdictions exceptions to that rule have been made in cases where the individual for whom the support is sought is physically disabled. 379 A.2d at 715. However, the court did not reach that issue in *Nelson*, deciding that the son was insufficiently disabled to require further support. *Id.* For other cases that hold to the general rule, see *Norris v. Norris*, 473 A.2d 280 (D.C. 1984); *Jones v. Jones*, 262 A.2d 601 (D.C. 1970); *Jackson v. Jackson*, 200 A.2d 380 (D.C. 1964); *Blumenthal v. Blumenthal*, 161 A.2d 137 (D.C. 1960); *Bloedorn v. Bloedorn*, 91 F.2d 245 (D.C. 1937).

42. *E.g.*, *Randolph v. District of Columbia*, 333 A.2d 380 (D.C. 1975). D.C. CODE ANN. § 16-916 (1981) states that "[w]henver a husband or wife shall fail or refuse to maintain his or her needy spouse . . . although able to do so, . . . the court, upon proper application and upon a showing of genuine need of a spouse, may decree, pendente lite and permanently, that such husband or wife shall pay reasonable sums . . . ."

trafamily Offenses" (IFOA).<sup>43</sup> Section 16-1001(5) defines an "intrafamily offense" as:

*an act punishable as a criminal offense committed by an offender upon a person:*

(A) to whom the offender is related by blood, legal custody, marriage, having a child in common, *or with whom the offender shares or has shared, within the last year, a mutual residence*; and

(B) with whom the offender maintains or maintained an intimate relationship rendering the application of this chapter appropriate.<sup>44</sup>

The clause "or with whom the offender shares or has shared, within the last year, a mutual residence" qualified only by the requirement that an intimate relationship also must be or have been present, includes a broad range of relationships within its coverage. It does not include, however, offenses perpetrated in institutions such as nursing homes, or by those lacking the requisite intimate relationship. Further, the section is limited in its application by the requirement that the actual act committed be punishable as a criminal offense.<sup>45</sup>

Sections 16-1003 to 16-1006 set out the process to obtain a civil protection order and, if an emergency situation warrants, a temporary protection order.<sup>46</sup> If issued, a temporary protection order may be of no more than fourteen days duration.<sup>47</sup> While section 16-1005 provides for numerous remedies,<sup>48</sup> it does not mandate that any type of service be supplied to the individual who is the subject of the offense. Finally, there is no provision within the chapter requiring that those in possession of information regarding an intrafamily offense *report* it to the appropriate authorities.

Another area of law that intersects the area covered by the APSA is that of conservatorship and guardianship. Sections 21-1501 to 21-1507 of the D.C. Code provide the mechanism by which an individual can be appointed the conservator of another's property.<sup>49</sup> Section 21-1501 states that the Superior Court of the District of Columbia may, upon petition by the individual himself, by a relative or relatives of the individual, or by any other person or persons, appoint a conservator of the individual's property upon a finding that he is "an adult residing in or having property in the District of

---

43. D.C. CODE ANN. §§ 16-1001 to -1006 (1981 & Supp. 1986).

44. *Id.* § 16-1001(5) (emphasis added).

45. *Id.*

46. *Id.* § 16-1003 to -1006.

47. *Id.* § 16-1004(d).

48. *Id.* § 16-1005.

49. D.C. CODE ANN. §§ 21-1501 to -1507 (1981).



Columbia [and] is unable, by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness . . . or physical incapacity" to care properly for his property.<sup>50</sup> A subsequent section allows for a temporary conservator to be appointed if necessary.<sup>51</sup> Further, section 21-1506 provides that the court may, at any time, order the conservator or any other person to be responsible for the personal welfare of the individual whose property is the subject of the conservatorship.<sup>52</sup> A person so appointed is to have the same powers as a guardian of persons or infants under guardianship.<sup>53</sup> In addition, District law provides for those incapacitated through mental illness under the code section entitled "Hospitalization of the Mentally Ill" (the Ervin Act).<sup>54</sup> An individual may be hospitalized under that Act based on a court finding that the individual is mentally ill and is "likely to injure himself or other persons if allowed to remain at liberty."<sup>55</sup> Based on that finding, the court may also order any other treatment it deems to be in the best interests of the individual or the public.<sup>56</sup>

Because there was a perceived need for protective services for certain adults in the District to complement the legal provisions then applicable, an adult protective services program was established in 1967.<sup>57</sup> Today, the administering body of the District of Columbia's Adult Protective Services Program is located in the Social Services Division within the Family Services Administration of the Commission on Social Services in the Department of Human Services.<sup>58</sup>

---

50. *Id.* § 21-1501.

51. *Id.* § 21-1505.

52. *Id.* § 21-1506.

53. In the District of Columbia there is no statutory provision directly providing for guardianships for adults. It appears that this section, in conjunction with D.C. CODE ANN. §§ 21-101 to -120 (1981 & Supp. 1985) covering Fiduciary Relations and the Mentally Ill, provides the mechanism through which an adult receives a guardian in the District. Bill 6-7, the District of Columbia Guardianship, Protective Proceedings and Durable Power of Attorney Act of 1985, is pending before the Judiciary Committee and would establish statutory authorization of adult guardianship proceedings.

54. D.C. CODE ANN. §§ 21-501 to -592 (1981 & Supp. 1985).

55. *Id.* § 21-545(b).

56. *Id.*

57. See Protective Services for Adults, *supra* note 5, and accompanying text.

58. Social Services Block Grant Annual Services Plan, *supra* note 6, at 5. Funding for the program is provided by city appropriations, as well as the Social Services Block Grant, a federal grant whose origin is found in an amendment to title XX of the Social Security Act. Protective Services for Adults (PSA) Fiscal year 1984, History of the Program, *supra* note 5, at 1; Protective Services Block Grant Annual Services Plan, *supra* note 6, at 1. Under the Block Grant, the federal government enumerates goals that it wishes to promote, leaving the state wide latitude in determining how the funds are to be spent. *Id.* One of the desired goals of Block Grant legislation is to provide services aimed at "preventing or remedying neglect, abuse or exploitation of . . . adults unable to protect their own interests . . ." *Id.* The District has

The "Social Services Block Grant Annual Services Plan" for the District of Columbia, covering the program year of October 1, 1984 to September 30, 1985, defines the function of protective services for adults as the "[p]rotection of adults 18 and over who are exploited, abused or neglected and who are unable to protect their own interests and have no responsible party willing or able to act on their behalf."<sup>59</sup> An individual need not be impaired, but merely be unable to protect his or her own interests. Under the Adult Protective Services Program reports of suspected abuse, exploitation, or neglect were investigated and evaluated by staff members.<sup>60</sup> Through the evaluation the staff member was to determine whether the individual was an actual victim of, or vulnerable to, abuse, exploitation, or neglect and whether the individual was capable of aiding in the resolution of the situation.<sup>61</sup> Counseling for the client, family members, and other responsible persons was available.<sup>62</sup> Staff were to help develop a plan to meet the situation, and "to arrange for appropriate medical, legal, financial, placement, social or other community services" if necessary.<sup>63</sup> Finally, staff were to aid in stabilizing the situation by continuing to monitor it and by providing follow-up aid as became necessary.<sup>64</sup> Under the 1984-1985 program, there was no requirement to report instances of abuse or neglect. Further, no means were available to prevent third persons from blocking access to individuals who were otherwise eligible for services and were in need of them.<sup>65</sup> The provision of services, and the investigation of reports of abuse or neglect were left to the discretion of staff members. Finally, staff lacked the means to force services on those whom it judged to be in need of them

---

made a policy decision to address this issue through the establishment and funding of the Adult Protective Services Program. *Id.* at 26.

59. Social Services Block Grant Annual Services Plan, *supra* note 6, at 26. The services provided under the 1984-85 program are still being provided. The APSA supplements the services. Social Services Block Grant Annual Services Plan for the District of Columbia, Services Program Year Oct. 1, 1985-Sept. 30, 1986, at 18 [hereinafter cited as Social Services Block Grant Annual Services Plan, 1985-86].

60. Social Services Block Grant Annual Services Plan, *supra* note 6, at 26.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. In the report prepared by the committee which drafted the bill that was to become the APSA it was stated that "[i]n the absence of a Protective Services for Adults law in the District of Columbia, investigation and intervention on behalf of an abused or exploited individual can be effectively stymied or brought to a standstill by a third party or proprietor denying access." P. Shackleton, *supra* note 8, at 1 (quoting a memorandum from the Director of the District of Columbia Department of Human Services to the District of Columbia Corporation Counsel (1979)).

and incapable of making a valid determination of that need on their own. The APSA was drafted in an attempt to address some of these issues.

*B. The Adult Protective Services Act of 1984*

Although it is true that the APSA applies to instances of abuse, neglect, and exploitation of impaired adults, it appears that the primary impetus for its creation was a desire to aid the abused elderly in the community.<sup>66</sup> Drafters of the Act were aware of various studies concerning both the provisions of other state statutes and problems engendered by them, as well as the sociological issues considered to be important in the formulation of such acts.<sup>67</sup> The Committee charged with drafting the Act stated its primary purpose as facilitating "the goal of providing an array of services to impaired adults who have been abused, neglected, or exploited and remain highly vulnerable to continued abuse, neglect, or exploitation, while at the same time respecting as foremost the interests of self-sufficiency and privacy."<sup>68</sup>

The Act begins with a statement of its objectives,<sup>69</sup> followed by section 2 that defines the various terms used in the Act, one of the most important being that of "abuse." The definition of "abuse" contains five components:

(A) The intentional or reckless infliction of serious physical pain or injury;

(B) The use or threatened use of violence to force participation in "sexual conduct" . . . .

(C) The repeated, intentional imposition of unreasonable confinement, resulting in severe mental distress;

(D) The repeated use of threats or violence, resulting in shock or an intense, expressed fear for one's life or of serious physical injury; or

(E) The intentional or deliberately indifferent deprivation of essential food, shelter, or health care in violation of a caregiver's responsibilities, when that deprivation constitutes a serious threat to one's life or physical health.<sup>70</sup>

---

66. P. Shackleton, *supra* note 8, at 1.

67. *Id.* at 2.

68. *Id.*

69. The objectives of the Act are stated as being: "[t]o address instances of abuse, neglect, and exploitation of impaired adults by establishing a system of reporting, requiring the investigation of each report received, and ensuring the availability of protective services." 32 D.C. Reg. 13 (1984).

70. D.C. CODE ANN. § 6-2501 (Supp. 1986). Drafters of the Act indicate that the unreasonableness of the confinement is to be determined by a balancing test in which the alleged reason for the confinement is weighed against the mental distress it produces. P. Shackleton, *supra* note 8, at 6.

The restriction that the physical pain or injury be serious in nature narrows the applicability of the Act. This was done in an effort to differentiate situations in which protective services were necessary from those in which social services already available would be sufficient to meet the need of the individual.<sup>71</sup> There was concern that duplicative efforts would produce unnecessary costs.<sup>72</sup> The committee also adopted the opinion of some in the field that the definition of certain types of abuse be limited to repeated occurrences of the act in question,<sup>73</sup> with the caveat that in the case of physical abuse, sexual abuse, or "deprivations of food, shelter, or health care," which constituted a serious threat to an individual's life or physical health, repetitive conduct would not be required in order to trigger the Act.<sup>74</sup> In addition, in order to apply paragraph (E) it was necessary to define who qualifies as a "caregiver."

A "caregiver" is defined as "a person<sup>75</sup> that, by law, contract, court order, or voluntary action is charged with or has assumed the responsibility for an adult's essential food, shelter, or health-care needs."<sup>76</sup> After the passage of the Act, commentators noted several problems arising from the definition of "caregiver," one being the amorphous nature of the word "voluntary."<sup>77</sup> Does this create an obligation otherwise nonexistent in the District for an adult child to support his or her parent? Is a neighbor who out of kindness

---

71. Memorandum from J. Fenton, Committee Counsel, to Members, Committee on Human Services, Council of the District of Columbia, Concerning Bill 5-334, the Adult Protective Services Act of 1984 (October 30, 1984) at 3-4 [hereinafter cited as J. Fenton]. Concern about the cost of the services to the city, especially when they may be duplicative, (since other social services are already provided), was another reason given for limiting the definition. *Id.* at 4 (quoting Statement of Audrey Rowe, Commissioner, Commission on Social Services, District of Columbia Department of Human Services, before the Committee on Human Services, at 1-2 (Jan. 26, 1984)).

72. *Id.* at 4 (quoting statement of Audrey Rowe).

73. *Id.* at 1-2. The memorandum cites one commentator who prepared a report on other states' APS laws as stating that repetitive conduct should be required since one instance of hitting a child or one's wife does not constitute child or wife abuse. Further, one instance of not providing a needed service is not neglect, since "everyone [sic] of us fails in something we do at one time or another." *Id.* at 1-2 (quoting H. HAVERMAYER, ADULT PROTECTIVE SERVICES LAWS: A CRITIQUE 4 (1984)). The memorandum goes on to state that the House Select Committee on Aging agrees that the conduct must be repetitive in order to constitute elder abuse. *Id.* at 2 (quoting HOUSE SELECT COMM. ON AGING, ELDER ABUSE: AN EXAMINATION OF A HIDDEN PROBLEM, 97TH CONG., 1ST SESS. vii (1981)).

74. *Id.* at 3.

75. A "person" is defined by the Act as being "an individual, facility, agency, corporation, partnership, the District government, or any other organizational entity." D.C. CODE ANN. § 6-2501(10) (Supp. 1986).

76. *Id.* § 6-2501(4).

77. R. Malson & J. Wolfgang, Adult Protective Services Act of 1984: Legislative and Legal Analysis, 2-4 (prepared for the Commission on Social Services, District of Columbia Department of Human Services, April 10, 1985).

brings food to a friend compelled to continue to do so?<sup>78</sup>

Similar to the definition of "abuse" is that of "neglect." The definition of "neglect" contains many of the elements included in the definition of abuse, with the qualification that in order to come under the Act, the imposition of serious physical pain or injury, or unreasonable confinement, must be repetitive and careless in nature.<sup>79</sup> "Neglect," as defined by the Act, also includes the repeated failure on the part of a caregiver to protect an individual from the types of abuse discussed above.<sup>80</sup> In the case of the careless deprivation of essential food, shelter or health care, one instance will constitute neglect.<sup>81</sup>

The third general category of activities that is encompassed by the Act are those that are exploitive in nature. "Exploitation" is defined as the "unlawful appropriation or use of another's 'property,' defined in section 22-3801, for one's own benefit or that of a 3rd [sic] person."<sup>82</sup> It is to be noted that the definition of "exploitation" does not include a requirement that the act be repetitive in nature.

Not all individuals who are the victims of abuse, neglect or exploitation as defined by the Act are entitled to protective services. In order to qualify, one must meet the definition of "an adult in need of protective services."<sup>83</sup> First, one must be eighteen years of age or older, and because of a physical or mental impairment be "highly vulnerable to abuse, neglect or exploita-

---

78. *Id.*; see *supra* notes 39-42 and accompanying text. A counter-argument can be made based on D.C. CODE ANN. § 6-2506(d)(2) (Supp. 1986), which states that "[i]f the court finds that the Corporation Counsel has proven the averments in the petition . . . it may: . . . (2) Direct a caregiver to fulfill his, her, or its legal or contractual responsibilities, or to refrain from inadequately carrying out voluntarily assumed responsibilities." It can be argued that this section does not require a voluntary caregiver to provide any service, but only that if an individual does undertake to provide services, they do so in an adequate manner.

79. D.C. CODE ANN. § 6-2501(9)(A), (B) (Supp. 1986). See P. Shackleton, *supra* note 8, at 6. The full text of D.C. CODE ANN. § 6-2501(9) defines neglect as:

- (A) The repeated, careless infliction of serious physical pain or injury;
- (B) The repeated failure of a caregiver to take reasonable steps, within the purview of his or her responsibilities, to protect against acts of abuse described in paragraph (1)(B) of this section;
- (C) The repeated, careless imposition of unreasonable confinement, resulting in severe mental distress; or
- (D) The careless deprivation of essential food, shelter, or health care in violation of a caregiver's responsibilities, when that deprivation constitutes a serious threat to one's life or physical health.

*Id.*

80. D.C. CODE ANN. § 6-2501(9)(B) (Supp. 1986).

81. *Id.* § 6-2501(9)(D).

82. *Id.* § 6-2501(8).

83. *Id.* § 6-2501(2); *id.* § 2605(a)(1)(A).

tion.”<sup>84</sup> Secondly, one must currently be experiencing abuse, exploitation or neglect at the hands of another, or have been the victim of such an act in the recent past.<sup>85</sup> Finally, the abusive, exploitive or neglectful conduct by others must be likely to continue due to the lack of anyone “willing and able to provide adequate protection” for the individual.<sup>86</sup>

An additional limiting factor placed on the population covered by the Act is that individuals who are the subject of self-abuse or self-neglect are not entitled to services,<sup>87</sup> unless that self-abuse or self-neglect generates further abuse or neglect by another.<sup>88</sup> This restriction evidences the committee’s desire to respect an individual’s right to choose his or her lifestyle free from state interference.<sup>89</sup> The drafters of the Act stressed the fact that the Act could not be interpreted as entitling the entire homeless population in the District of Columbia to shelter, homelessness being viewed by some as self-abuse or self-neglect.<sup>90</sup>

As mentioned previously, “protective services” are defined by the Act as services designed to remedy or substantially reduce the likelihood of an individual being abused, neglected, or exploited by another.<sup>91</sup> Drafters of the

---

84. *Id.* § 6-2501(2)(A).

85. *Id.* § 6-2501(2)(B).

86. *Id.* § 6-2501(2)(C).

87. They may, however, still receive services under the Adult Protective Services Program. Social Services Block Grant Annual Services Plan, 1985-86, *supra* note 59, at 18.

88. D.C. CODE ANN. § 6-2502 (Supp. 1985). In a case where an individual’s self-abuse provokes abuse, exploitation or neglect by another, the objective of protective services “shall be to substantially reduce the likelihood of further abuse, neglect, or exploitation by others while simultaneously respecting an adult’s right to determine his or her own lifestyle.” *Id.* E.g., should an elderly person living alone in the community fail to provide him or herself with proper nutrition or medical care, they may be a likely candidate for financial exploitation due to their debilitated state. Should this situation come to the attention of DHS, a staff member may try to help the person receive proper medical care and nutrition in order to help clear their thinking and enable them to realize that they are being exploited. (Several other resolutions are also possible).

89. *See supra* note 33 and accompanying text.

90. P. Shackleton, *supra* note 8, at 7. Concern about this possibility is not misplaced given the Supreme Court of Appeals of West Virginia decision in the case of Hodge v. Ginsberg, 303 S.E.2d 245 (W. Va. 1983). In this case the court decided that a similar West Virginia statute “designed to provide protective services to incapacitated adults” entitled the homeless to shelter. *Id.* at 247 (citing W. VA. CODE §§ 9-6-1 to 9-6-8 (Cum. Supp. 1982)). This decision was based on a finding that the homeless were “incapacitated adult[s].” “Incapacitated adult” was defined as “[A]ny person who by reason of a physical, mental, or other *infirmity* is unable to carry on the daily activities of life necessary to sustaining life and reasonable health.” *Id.* (emphasis added). The court determined that homelessness was an “infirmity” and therefore covered by the statute. 303 S.E.2d at 249-50. Of note here is the problem of whether individuals of diminished mental capacity are able to abuse or neglect themselves.

91. D.C. CODE ANN. § 6-2501(12) (Supp. 1986). The Services have to be “reasonably calculated” to reduce that likelihood. *Id.* They can include “food, heat, shelter, clothing, health care, home care, counseling, legal assistance, and social case work.” *Id.*

Act chose this definition because it represented a more realistic goal than that of the complete elimination of abuse or neglect.<sup>92</sup>

### 1. *The Reporting Requirement*

Section 4 of the Act creates a new legal obligation requiring certain persons to immediately report what they have substantial cause to believe is an instance of abuse or neglect of another individual rendering protective services necessary.<sup>93</sup> Those who are required to report are "a conservator, court-appointed mental retardation advocate, guardian, health-care administrator, licensed health professional, police officer, or social worker [who discovers the suspected abuse or neglect] as a result of his or her appointment, employment, or practice."<sup>94</sup> It would appear that there is no duty to report any instance not discovered in that manner. An exception to mandated reporting is created for social workers or licensed healthcare professionals who are working for a lawyer who has as his or her client the party accused of the abusive or neglectful conduct. In addition, social workers and licensed health professionals are exempt from reporting if the accused party is their client or patient.<sup>95</sup> Voluntary reporting by any member of the community is also provided for.<sup>96</sup>

### 2. *The Investigation*

When a report of an adult in need of protective services is filed, section 5 of the Act requires that the case be investigated unless one of two conditions exists.<sup>97</sup> The first occurs if the report "fails to allege facts that, if proved, would be sufficient to support the conclusion that the alleged victim is an 'adult in need of protective services' " as defined in the Act.<sup>98</sup> The second

---

92. P. Shackleton, *supra* note 8, at 6. "[R]education rather than elimination of risk is the legitimate and practicable goal of adult protective services." *Id.*

93. Compare D.C. CODE ANN. § 6-2503 (Supp. 1986) with Social Services Block Grant Annual Services Plan, *supra* note 6, at 26. Those who make a report of abuse, neglect or exploitation in good faith, are immune from civil and criminal liability for so reporting. *Id.* § 6-2508.

94. *Id.* § 6-2503(a)(1). Section 6-2511 allows professional privilege to be waived by a judge if he or she determines it would be in the best interests of justice to do so.

95. *Id.* § 6-2503(b).

96. *Id.* § 6-2503(a)(2). The report may be oral or written, and should be transmitted to the office designated by the mayor to receive the reports. The mandatory reporting of instances of exploitation was not made a requirement under the Act due to the drafter's feeling that it is more difficult to determine whether an individual was the victim of exploitation than it is to make that same determination concerning abuse or neglect. P. Shackleton, *supra* note 8, at 7.

97. D.C. CODE ANN. § 6-2504(a)(2) (Supp. 1986).

98. *Id.* § 6-2504(a)(2)(A).

exception is triggered if the report is "substantively repetitive of a previously reported incidence of abuse, neglect, or exploitation."<sup>99</sup> Nevertheless, this does not preclude an investigation under these circumstances should the staff of the Department of Human Services (DHS) choose to do so.<sup>100</sup>

In carrying out an investigation, an Adult Protective Services worker [APS worker] must first announce his or her purpose to the individual who is suspected of being in need of protective services.<sup>101</sup> Should the investigator have need to enter upon private premises or into a private residence in order to carry out an investigation, he or she must also inform any adult present who appears to have a "reasonable expectation of privacy in the residence or immediate premises" of his or her purpose for entry.<sup>102</sup> Before an investigator may enter, both the adult allegedly in need of protective services, and any other adult who has an expectation of privacy as described above, must consent to the investigation.<sup>103</sup>

If the adult who is suspected of being in need of services refuses to consent to the investigation, and "it does not manifestly appear to the APS worker" that the individual is doing so out of fear or intimidation caused by a third person, the investigation must be discontinued.<sup>104</sup>

However, should it "manifestly appear" that consent was refused due to fear or intimidation, or if a third party on the premises refuses to permit the investigation, the Department of Human Services may ask the Corporation Counsel to petition for an ex parte order enjoining the third party from interfering with the investigation.<sup>105</sup> Given proper evidence, the court may order the third party not to interfere with the investigation. In the alternative, the court may order any other relief necessary for the investigation to

---

99. *Id.* § 6-2504(a)(2)(B).

100. Social Services Block Grant Annual Services Plan, 1985-86, *supra* note 59, at 18.

101. D.C. CODE ANN. § 6-2504(b) (Supp. 1985).

102. *Id.* If necessary, the worker may be accompanied by a police officer. *Id.* at § 6-2504(a)(5). If a police officer accompanies the investigator, the police officer's presence must also be announced. *Id.* § 6-2504(b).

103. *Id.* § 6-2504(b).

104. *Id.* The drafters indicate that "the words 'manifestly appear' mean what they say, and supposition without strong, empirical, articulable support will not suffice." P. Shackleton, *supra* note 8, at 8.

105. D.C. CODE ANN. § 6-2504(b) (Supp. 1986). The petition must allege specific facts, supported by oath or affirmation, showing that:

- (1) There is probable cause to believe an adult located at a specified location is in need of protective services; and
- (2) An APS worker conducting an investigation was denied reasonable access to the adult by a 3rd person, or, if the adult objected to the investigation, there is probable cause to believe the objection was prompted by fear of intimidation instilled by another.

*Id.* § 6-2504(c).



go forward, providing that the adult's right to freely object to and terminate the investigation will be respected.<sup>106</sup>

### 3. *Mandated Services*

Section 6 of the Act requires that services be provided promptly after the APS worker conducts an investigation if four criteria are met. First, there must be a determination by DHS that the individual in question is "an adult in need of protective services."<sup>107</sup> Second, the individual in question or the person legally authorized to accept the protective services for that individual must consent to the services.<sup>108</sup> Third, that reasonable access is not denied by a third person;<sup>109</sup> and fourth, that the individual in question, absent indigency or exigent circumstances, agrees to reimburse the city for the services to the extent of his or her reasonable ability to pay.<sup>110</sup> Prior to the passage of the Act there was no obligation on the part of the Department of Human Services to supply "adult protective services" to any individual.<sup>111</sup>

Although the provision of services in section 13(c)(1),<sup>112</sup> is still largely up to the discretion of DHS, the Act provides for court action which can be filed by anyone aggrieved by a violation of the Act in order to "enjoin the continuation of that violation or the commission of any future violation."<sup>113</sup> An individual denied services may have standing to challenge that denial in court under this provision. If there is any question recording the adequacy of the services provided, an individual must demonstrate that the Department was guilty of bad-faith noncompliance in order to obtain different or augmented services.<sup>114</sup> In any case, the Department's obligation to ensure the provision of services to an individual is not to exceed ninety days of services.<sup>115</sup> In choosing the services to provide, the Department must act in a manner consistent with the Act's objectives of encouraging maximum self-determination and placing the least restrictions on an individual's personal liberty as possible.<sup>116</sup> Finally, in cases where the circumstances do not meet

---

106. *Id.* § 6-2504(d).

107. *Id.* § 6-2505(a)(1)(A).

108. *Id.* § 6-2505(a)(1)(B).

109. *Id.* § 6-2505(a)(1)(C).

110. *Id.* § 6-2505(a)(1)(D). The reimbursement provisions are found at §§ 6-2509(3), 6-2510.

111. *See supra* notes 93-94 and accompanying text.

112. Codified at D.C. CODE ANN. § 6-2512(c)(1) (Supp. 1986).

113. *Id.*

114. *Id.* There is no right to monetary relief against the District of Columbia under the Act. *Id.* § 6-2512(c)(2).

115. *Id.* § 6-2505(a)(2). The Department's decision as to type, level, and duration of services is only reviewable under the provisions of § 6-2512(c)(1).

116. D.C. CODE ANN. § 6-2505(e) (Supp. 1986).

the four criteria mentioned above, services predicated on the Act may only be provided after a protection order has been obtained.<sup>117</sup>

#### 4. Protection Orders

Under the Act, two types of protection orders are available: provisional and temporary orders.<sup>118</sup> A provisional protection order may be sought where it can be shown that the individual deemed in need of services failed to consent or that his lack of consent is the result of extreme physical or mental impairment.<sup>119</sup> In addition, the provisional order will be granted where it can be shown that a third party has intimidated or produced fear in the individual who has denied his or her consent;<sup>120</sup> or where reasonable access to the individual in question has been denied by a third party.<sup>121</sup> At the request of DHS,<sup>122</sup> a petition can be entered in court by the Corporation Counsel alleging one or more of these circumstances, as well as the other required components of a petition for a protection order listed in the Act.<sup>123</sup> The Act also contains certain due process requirements, including the right to notice, and the right on the part of any party served with notice, to counsel,<sup>124</sup> to present evidence, and to cross-examine witnesses.<sup>125</sup> Subpoenas are also made available to compel the presence at the hearing of any party essential to the relief sought.<sup>126</sup>

If, in the opinion of the court, the averments made in the petition are proven by a preponderance of the evidence, under section 6-2506, the court may:

- (1) Direct any person to refrain from abusing, neglecting, exploiting, directly or indirectly interfering with the provision of services to, residing with, or otherwise contacting the adult in need of protective services;
- (2) Direct a caregiver to fulfill his, her, or its legal or contractual

---

117. *Id.* § 6-2505(c).

118. *Id.* §§ 6-2506 to 6-2507.

119. *Id.* § 6-2506(a)(5)(A).

120. *Id.* § 6-2506(a)(5)(B).

121. *Id.* § 6-2506(a)(5)(C).

122. *Id.* § 6-2506(a). It is within the discretion of the Department to determine whether or not a petition should be filed, and only the Corporation Counsel may file one. P. Shackleton, *supra* note 8, at 9.

123. D.C. CODE ANN. § 6-2506(a) (Supp. 1986). Before filing a petition, the Corporation Counsel must conduct a factual inquiry to determine whether the petition would be legally supportable. If so, it can file the petition. The petition must show facts that substantiate one of § 6-2506(a)(5) requisites.

124. Provision to register and compensate lawyers willing to represent indigents pro bono is made. *Id.* § 6-2506(c).

125. *Id.* § 6-2506(b).

126. *Id.*

responsibilities, or to refrain from inadequately carrying out *voluntary assumed* responsibilities;

(3) Direct the Mayor to petition for the appointment of a conservator or guardian;

(4) Direct the Mayor to provide specified or unspecified protective services . . . Provided, that the court shall not direct the Mayor to provide a type of service not otherwise made available by the District government;

(5) Direct the Mayor, a caregiver, or, when appropriate, another party to the proceeding to remove the adult in need of protective services to a hospital, nursing home, community residence facility, hospice, or other appropriate facility (except a facility or part of a facility that has as its principal purpose the diagnosis and treatment of mental illnesses and disorders), so long as the placement is the least restrictive setting available in which the adult's needs can be adequately met;

(6) Direct any person to pay or reimburse the District . . . for relief granted under paragraph (4) or (5); or

(7) Direct any combination of the above.<sup>127</sup>

In deciding on the proper remedy, the court is directed to choose the one least restrictive of personal liberty and most conducive to promoting maximum self-determination.<sup>128</sup> A "strong though rebuttable presumption" that home care is preferable to institutionalization is to be adopted by the court.<sup>129</sup>

The legislative history of the Act reveals the fact that the Executive Branch of the District Government intended to restrict the application of the Act, and hence of its remedies, to adults sixty years old and over. This was due to the belief that the Ervin Act,<sup>130</sup> and the Intra-Family Offense Act [IFOA]<sup>131</sup> would be sufficient to cover the portion of the population between eighteen and fifty nine.<sup>132</sup> The Committee that drafted the APSA responded that the Ervin Act was applicable only to the mentally ill who are a danger to themselves or others, and provided only for hospitalization or alternative treatment for mental illness.<sup>133</sup> Also, the Ervin Act applied only in cases of

---

127. *Id.* § 6-2506(d) (emphasis added). For the reimbursement provisions, see *supra* note 110 and accompanying text.

128. D.C. CODE ANN. § 6-2506(e) (Supp. 1986).

129. *Id.* Also, the court must consider the potential expense of the proposed relief. *Id.*

130. D.C. CODE ANN. §§ 21-501 to -592 (1981 & Supp. 1985).

131. D.C. CODE ANN. §§ 16-1001 to -1006 (Supp. 1985). See *supra* notes 43-48 and accompanying text.

132. P. Shackleton, *supra* note 8, at 9.

133. *Id.* The prohibition against placing an individual in a facility that treats those with mental problems is found at D.C. CODE ANN. § 6-2506(d)(5) (Supp. 1986).

self-neglect, self-abuse or in cases where individuals are responsible for the abuse of others, instead of the subjects of abuse themselves.<sup>134</sup> Although the drafters admitted that there were similarities between the IFOA and the APSA, they pointed to such differences as the lack of a reporting requirement provision in the IFOA, the fact that it can only be used in cases of criminal conduct, the absence of mandated services, and the fact that the remedies under IFOA primarily consist of injunctive relief or criminal prosecution.<sup>135</sup> It is to be noted that under the IFOA counseling can also be ordered.<sup>136</sup>

The inclusion of a provision for guardianship and conservatorship in the APSA draws attention to the fear of some commentators that this type of protective act may provide yet another route to stripping some elderly persons inappropriately of their right to self-determination.<sup>137</sup> The APSA goes to great lengths to indicate that the services should be chosen while keeping in mind the desire to promote maximum self-determination. However, the reporting requirement appears undoubtedly destined to provide information on elderly people who would not otherwise receive a guardian or conservator and may have no need for one.

As a means of effectuating the remedies that fall into the categories of subsection (d)(4) or (5) of section 6-2506, a provisional protection order can be initiated. It may remain effective for up to forty-five days with a possible extension of an additional forty-five days.<sup>138</sup> An order granting relief under subsections (d)(1) to (3) and (6) of section 6-2506 will remain effective for a time period to be determined at the discretion of the court.<sup>139</sup>

If a petition filed by the Corporation Counsel is supported by an affidavit and alleges that there is an immediate and substantial risk of life-threatening harm to an individual who has been adjudged by DHS to be in need of protective services, the court may, without a hearing, issue an *ex parte* temporary protection order which provides for immediate instigation of any of the remedies discussed above.<sup>140</sup> In deciding on the remedy, the court is required to comply with the Act's admonitions concerning personal liberty and self-determination.<sup>141</sup> The order may remain in force for whatever pe-

---

134. D.C. CODE ANN. § 21-541 (1981 & Supp. 1985).

135. P. Shackleton, *supra* note 8, at 9; *see also supra* notes 43-48 and accompanying text.

136. D.C. CODE ANN. § 16-1005(c)(2) (Supp. 1986).

137. *See supra* notes 30-38 and accompanying text.

138. D.C. CODE ANN. § 6-2506(f) (Supp. 1986).

139. *Id.*

140. *Id.* § 6-2507. The order must be based on a finding by DHS that the individual is at an immediate, substantial risk of life threatening harm, and is in need of protective services. The court must make a determination of probable cause in order to issue it. *Id.*

141. *Id.*

riod the court may determine, until the hearing is held and a determination as to a provisional protection order is made.<sup>142</sup>

### 5. *Penalties for Noncompliance*

In order to enforce its provisions, the Act provides for various penalties.<sup>143</sup> Anyone who is required by the Act to report suspected instances of abuse or neglect, and willfully fails to do so can be charged with a misdemeanor. If found guilty, a person can be fined up to \$300.<sup>144</sup> In order to discourage individuals from making reports they know to be false, the Act makes filing a false report a misdemeanor, subject to a fine of up to \$1,000.<sup>145</sup>

Civil liability, and punitive damages not to exceed \$5,000, are the penalties prescribed for those who retaliate against an individual who makes a report under the Act or testifies in support of allegations made therein.<sup>146</sup> In order to recover, the retaliatory action must adversely affect the reporting individual's "rights, privileges, living arrangement, or terms of employment."<sup>147</sup> Finally, health-care administrators and health professionals who fail to make a required report under the Act or make a knowingly false report, are guilty of unprofessional conduct, and all governmental and professional sanctions are available for their punishment.<sup>148</sup>

## III. CONCLUSION

In an effort to aid those impaired individuals in the District of Columbia who are the victims of abuse, neglect, or exploitation, the District of Columbia government passed the Adult Protective Services Act of 1984. The Act extends the law as it existed in the District of Columbia by providing for the mandatory reporting of instances of abuse or neglect as defined in the Act, and for the mandatory provision of protective services to those individual who qualify for them. In addition, the Act provides a mechanism through which individuals in need of services, but denied them due to the intervention of a third party, may receive those services. Further, it allows DHS to

---

142. *Id.* Corporation Counsel must make sure that within 48 hours of the issuance of an ex parte order notice and service are executed. *Id.*

143. *Id.* § 6-2512. Criminal prosecutions brought under these provisions are to be held in the Superior Court of the District of Columbia on the basis of an information signed by the Corporation Counsel. *Id.* § 6-2512(b).

144. *Id.* § 6-2512(a)(1).

145. *Id.* § 6-2512(a)(2).

146. *Id.* § 6-2512(a)(4).

147. *Id.*

148. *Id.* § 6-2512(a)(5).

provide assistance to those who refuse it if the requirements for such an action are met.

Inherent in the Act is a conflict between the desire to aid impaired individuals and the desire to protect their civil liberties. The drafters of the Act have carefully and thoughtfully narrowed the application of the statute with the aim of affording those who are affected by it the maximum self-determination possible consistent with its desired outcome. Future application of the Act will indicate whether the intended balance has been achieved.

*Laurie A. Lewis\**

---

\* The author was employed by the Commission on Social Services, District of Columbia Department of Human Services between June 1985 and September 1985. The views expressed in this Note are those of the author and do not necessarily reflect those of the District of Columbia Department of Human Services.

